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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets	)	MM Docket No. 01-317
	)	
	)	
	)	
Definition of Radio Markets	)	MM Docket No. 00-244

COMMENTS OF IDAHO WIRELESS CORPORATION

I. INTRODUCTION AND SUMMARY.

Idaho Wireless Corporation ("IWC"), licensee of Station KZBQ(FM), Pocatello, ID, Station KOUU(AM), Pocatello, ID and Station KORR(FM), American Falls, ID, hereby files its comments in response to the Commission's *Notice of Proposed Rule Making and Further Notice of Proposed Rule Making* ("*Notice*")[1] in the above-captioned proceedings. The *Notice* asks for public guidance on a wide range of proposed revisions to the Commission rules and regulations that limit the local multiple ownership of radio stations and govern other relationships among local radio stations. These comments are timely filed in accordance with the Commission's recent extension[2] of the deadlines for the filing of comments and reply comments.

[1] *Notice of Proposed Rule Making and Further Notice of Proposed Rule Making* in MM Docket No. 01-317 and MM Docket No. 00-244, FCC 01-329, released November 9, 2001.

[2] By *Order* (DA 02-582), released March 8, 2002, the Commission's former Mass Media Bureau extended the comment and reply comment deadlines to March 27, 2002, and April 24, 2002, respectively.

IWC is pleased that the Commission issued the *Notice*, in that initiation of these proceedings now is critically important to the future of over-the-air, terrestrial radio stations and to the service they provide to the local audience. Now six years following the dramatic changes in the radio ownership rules brought on by the passage of the Telecommunications Act of 1996[3] the radio ownership structure in this country has been altered radically. During this time period, group ownership concentration of local stations has grown at an unprecedented rate and has resulted in extreme concentration levels in most of the nation's radio markets, including many smaller markets. In many radio markets there is now a handful of dominant radio group owners – dominant in terms of radio listening and even more so in terms of advertising revenues.

This concentration of local radio operations clearly has led to abuses by those who now possess such market power. While IWC herein outlines its experiences in Idaho, there is a growing body of evidence – as depicted in national news stories, congressional statements and FCC pleadings – documenting the extent to which certain radio group owners have been gone to anticompetitive extremes. Clearly, there is a compelling need for the Commission to adopt rules that will regain control over radio groups whose market power has led to so many abuses in recent years.

Massive consolidation of radio stations, in IWC's view, has worked against the interests of: (1) local businesses choosing to advertise on radio; (2) advertising agencies seeking to place such advertising effectively and easily; (3) other local radio broadcasters; and (4) the listening public itself. The practical business and service consequences of this high order of consolidation – coupled with the demonstrated behavior of certain group owners now capable of wielding significant and often unfair market power – demand that the Commission adopt a

[3]Pub. L. No. 104-104, § 202(b), 110 Stat. 110.

revised radio ownership regulatory system that better will ensure competitive radio markets and the best practicable service to the residents therein.

II. ABUSIVE AND PREDATORY BEHAVIOR OF CERTAIN MEDIA GROIUP OWNERS.

In recent years, evidence has been presented about the tactics and behavior of certain radio group owners who have consolidated a number of local radio stations and have gained a significant advantage in terms of market listening and market revenues. National news reports have focussed on techniques of several of these consolidators.

It is a frequent occurrence for group owners to offer their stations at many points below the typical "cost-per-point" figure for the market, sometimes even offering some or all stations at no charge. These groups have the financial wherewithal to run their stations at a loss, at least for a time, in order to knock small groups and single station operators out of consideration for advertising buys.

Some group owners position themselves as a "must buy" for all accounts, and all demographics, on the basis that they own so many of the stations in a market and/or region. Such large group owners will attempt to coerce an agency and/or advertiser to buy, or accept at no charge, a station that the agency/advertiser normally would not even consider.

Many of these large groups are downsizing local staff, so they can run stations all over the country more cheaply – to the point that the quality of their local radio offerings are impaired. However, advertisers keep purchasing time on these stations due to the pressure imposed on them by groups, often leading to joint purchase of many if not all of these groups' local stations.

This behavior of major group owners – coming into being as the result of FCC-approved major consolidation of radio facilities both locally and nationwide – has resulted in significant losses of various forms of diversity, as is being documented in the record of this proceeding and in the docket of other Commission matters where parties have challenged various group owners in a variety of regulatory settings.

In the name of "consolidation" and desired "efficiencies," the statutory and regulatory changes brought about by the 1996 Act and corresponding FCC rules changes may well have ensured a rate of return satisfactory to the stockholders of a limited number of business entities who have grown their national and local portfolios to levels that hardly could have been imagined by the FCC or the crafters of the 1996 Act. However, few if any correlating benefits are being enjoyed by the listening public.

Allegations have come to light that certain of these larger group owners have arranged for third parties to purchase stations in a market where the group owner already or would exceed the radio station ownership limits, and thereby are "warehousing" stations for acquisition were the Commission to further liberalize the radio ownership rules. Other alleged abuses concern the apparent withholding of airplay of those recording artists who refuse to use the group owner's commonly-owned concert promotion service – raising the spectre of "reverse payola."[4]

Several formal challenges also have been made to these group owners station acquisition efforts.[5] Indeed, earlier this month the Commission, exercising its public interest responsibility

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[4]*Section 507 of the Communications Act of 1934*, 47 U.S.C. §507, contains the statutory, criminal prohibition against "payola" – the agreement to air broadcast matter in exchange for undisclosed acceptance of payment or other consideration.
[5]*See, e.g.* petition to deny filed against assignment of license in BALH-20010918AAP, involving the transfer of Station WKKJ, Chillicothe, OH.

designated one of these cases for hearing,[6] despite the fact that the proposed acquisition would come within the numerical limits of the Telecommunications Act's provisions.

For some time, IWC has been challenging an "Auction 25" application filed by the winning bidder – a bidder in which a large group owner has had an attributable interest. IWC's Petition-to-Deny and several other filings submitted thereafter, have taken the position that the major group owner had, in effect, taken control of the applicant during the bidding process and became the *de facto* applicant, even though that large group owner was ineligible to participate in the "closed" auction. While this rulemaking proceeding is not the forum to resolve that petition-to-deny matter, IWC points to this pending matter as yet another example of how some group owners' zeal to own and control as many stations as possible has led to behavior argued to violate FCC rules and policies.

III. REVISING THE METHOD FOR DETERMINING RADIO MARKETS.

As suggested by the Commission in its *Notice*, and in the earlier *Notice of Proposed Rule Making* looking exclusively at proposed changes to the radio market definition standard,[7] the time has arrived for the Commission to revise the system by which it determines radio markets, for application of its local radio multiple ownership rules. There now is ample evidence that the current rules – based on overlapping principal community contours of co-owned stations – have not been effective in yielding rational results.

Although, at first blush, it might seem appealing for the Commission simply to use Arbitron markets as a substitute for the "radio ownership" markets created by the overlapping

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[6]*See In the Matter of the Application of Air Virginia, Inc., (Assignor) and Clear Channel Radio Licenses, Inc., (Assignee)*, FCC 02-52, released March 19, 2002.
[7]*See Notice of Proposed Rule Making* in MM Docket No. 00-244, FCC 00-427, released December 13, 2000.

contour method, large groups have the power to define the market to suit their needs – including markets established by Arbitron. As an example, Arbitron first came into the Pocatello, ID market when IWC commissioned a survey for Bannock County. IWC no longer can obtain that survey because a major group owner wants Bannock, Bingham and Bonneville counties (containing Pocatello, Blackfoot and Idaho Falls) to be part of a single survey. The combined three-county survey does not best meet the needs of IWC; but Arbitron will continue to honor the group owner's wishes because it has so many stations. Although having the larger geographic area as the market definition might aid IWC in terms of ownership limits, the power the large groups have over the rating services provides yet another example of the potential for real abuse.

IV. THE FCC HAS THE AUTHORITY AND THE PUBLIC INTEREST RESPONSIBILIITY TO MAKE REGULATORY CHANGES.

IWC believes that, as suggested in several part of the FCC's *Notice*, that the agency has the regulatory latitude to adopt changes to its radio ownership rules and regulations. It is the firm belief of IWC that the Commission need not honor the numerical limits of the Telecommunications Act of 1996 as the sole benchmark for whether a particular radio station combination in a market should be allowed. Rather, the FCC's overall public interest authority demands that the FCC periodically review the effects of its regulations and make necessary changes so that the public interest best will be served.

The Commission now is presented with an opportunity for it -- the expert agency – to craft revised rules that will add greater rationality to radio communications policy. There are lawful and practical mechanisms available to the Commission that can enable the agency to help restore radio broadcasting to a medium that reflects the local community, develops and thrives due to the symbiotic relationship that most successful local broadcasters historically have achieved with the community, its businesses and its institutions. This is not done with pressuring local advertisers and advertising agencies and cutting local staffing to the bone.

V. A REVISED SYSTEM OF MARKET/OWNERSHIP EVALUATION SHOULD BE ESTABLISHED BY THE COMMISSION.

It is IWC's view that a new radio ownership regulatory "factor" should be established and that it should be based on a combination of revenue share and audience share. Both revenues and audience are affected by the percentage of the market that a large group owner can control. A multiple owner can – and contemporary evidence has demonstrated that they do – dictate rates and promotions as they obtain greater control of revenues and audience share, which is yet another predatory practice.

The Commission should examine the degree of control of these now very large broadcast group owners, looking at the top 100 markets and in smaller markets as well. These entities provide service to the majority of the population of the country and control the majority of the revenues of the country.

While the Commission might still choose to employ the numerical limits found in the terms of Section 202(b) of the Telecommunications Act and the FCC's current rules, use of the supplementary "concentration factor" better will ensure that radio station combinations in a local market will foster competition rather than strangle it.

IWC urges the Commission to develop a "bright line" concentration factor that will put existing and potential group owners on notice as to which combinations will be allowed to be formed under the Commission's regulatory oversight. Reliance on case-by-case review would impose undue burdens on the Commission and its regulates, and would perpetuate a level of undesirable regulatory uncertainty.

Throughout these comments IWC has expressed its great and growing concern over the effects of rampant concentration in radio markets across the country. While a revised FCC regulatory system surely should be applied on a prospective basis, the Commission also should consider the adoption of policies that would not "grandfather" existing combinations that are creating such public interest damage. At minimum, the Commission, IWC believes, should adopt a policy of not allowing assignment and/or transfer of such combinations to a single third party – requiring instead the retention, or the transfer/assignment to yet a different party, of those stations that would not be allowed to be commonly owned prospectively under the terms of revised FCC radio ownership regulations. Indeed, IWC suggests that the Commission strongly consider the adoption of a policy requiring existing group owners' divestiture of non-compliant stations by a "date certain," not just upon any further assignment/transfer activity.

IWC believes the FCC should lower the ownership limits in a single market and, though not proposed specifically in the *Notice*, restore the former three-year "holding period" rule on the purchase and sale of a station. Based on the record being established in this proceeding, IWC urges the Commission to launch a wide-ranging investigation of abuses in station warehousing, cross-promotion with other entities (concert and outdoor businesses) and time brokerage agreements. This investigation also should look to the practice of group licensees coercing advertisers to purchase their groups and, in the process, include lower-rated (in a particular format) or out-of-target-demographic stations that traditionally wouldn't be purchased, by lowering rates on one of its owned, highly-rated stations. This abusive and anticompetitive technique means that, in many cases, another highly-rated but independent station doesn't get the "buy." While this may or may not be *per se* illegal or in violation of the FCC's rules, it is yet another predatory practice that has been enabled as the result of station consolidation.

Also, and to obtain greater certainty and fairness in the arena of local radio station ownership, IWC urges the agency to require prior Commission approval before local marketing agreements ("LMAs") can be established in a local market. Approval or disapproval of new LMA relationships would be governed on the same basis as would direct station multiple ownership – including the potential for divestiture and conditioned transfer to third parties of existing LMA relationships. Indeed, and in light of the need for the Commission to take a more rigorous approach to ownership and other business relationships among stations, IWC recommends that the Commission adopt a similar regulatory approach to new and existing joint sales arrangements ("JSAs"). These arrangements to play a significant role in affecting the fairness and effectiveness of competition in a local market.

IWC's concluding observation is that the current ownership rules and resulting consolidation have depleted medium and small markets of local ownership. Unlike the largest markets, where virtually all stations were already owned by national concerns, small market stations were run by owner-operators that were active in their communities. IWC belongs to Rotary. IWC calls the local Red Cross when there is a shortage of blood and do promotions and remotes. The IWC stations do free remotes and promotions for Idaho State University's annual scholarship drive. IWC also is a charter sponsor (and largest donor) for the local organization building a greenway along a river in our community. IWC conducts an ongoing campaign (including remotes) for the Chamber Of Commerce, to promote membership. The list goes on and on.

The large markets didn't suffer the loss of local ownership because they didn't have it. The small markets have lost a valuable community resource. Community involvement has suffered. Public service has suffered. Local news also has suffered considerably in this era of consolidation. Local PSAs are rare on the large group-owned stations. The "consolidated" stations are unwilling, in our market, to broadcast high school sports, resulting in Idaho sports teams having far less play-by-play coverage than before consolidation. In light of these factors and others, the small towns of America have been robbed by consolidation.

VI. CONCLUSION.

It is now more than evident that the Congress and the Commission were mistaken as to the likely effects of statutory and regulatory changes involving radio ownership. Now benefited by real world evidence of the effects of these alterations to the radio ownership rules, the Commission has ample opportunity and authority to revise the radio ownership rules again, as part of its duty to enact and revise its regulations and policies, based on the agency's reasoned public interest judgment.

Respectfully submitted,

IDAHO WIRELESS CORPORATION

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March 27, 2002

CERTIFICATE OF SERVICE

I, Lisa M. Hoar hereby certify that a copy of the foregoing "Comment of Idaho Wireless Corporation" was sent, by first class mail, postage prepaid, to the following, this 27th day of March 2002:

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